



CENTRE FOR INTERNATIONAL AND PUBLIC LAW
FACULTY OF LAW



THE AUSTRALIAN NATIONAL UNIVERSITY

Newsletter

Issue No. 1 of 2001

edited by Cathy Hutton

March 2001

For Your Diary 

International Law
Discussion Group
Evening Seminar

Legal Aspects Of The Middle East Peace Process

Professor Yehuda Blum
Hersch Lauterpacht Professor of
International Law
Hebrew University of Jerusalem

Tuesday 3 April

5.30 pm – 6.30 pm

Staff Library (first floor) Law School
(cnr Fellows and East Roads)

Professor Blum was Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Israel to the United Nations, New York 1978-84. He was a member of the Israel negotiating team on the peace treaty with Egypt (Camp David, February 1979; Blair House, March 1979) and a member of the Israel legal team, Taba Arbitration (Israel-Egypt, 1986-8). Professor Blum is visiting Canberra as a guest of the Embassy of Israel and will give an informal seminar at the Law School. He will speak for 30 minutes and then is happy to take questions.

**Please contact the Centre if you would like
to attend this seminar**

ANZSIL Annual Conference

13 & 14 June 2001 

The Centre's annual International Law Conference and the Annual General Meeting of the Australian and New Zealand Society of International Law (ANZSIL) will be held 13-14 June 2001 at University House, ANU. The theme of the conference is 'Antipodean Contributions to the Development of International Law'.

The conference brochure will shortly be available on the web at <http://law.anu.edu.au/CIPL/WEB22-07>

A brochure will be sent out to all those registered with the Centre as having an interest in international law, which includes all those who have attended the ANZSIL conference since 1998.

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Public Law Weekend

2 & 3 November 2001

This will be the sixth Public Law Weekend organised by the Centre for International and Public Law and the third devoted to constitutional law. The weekend will follow the usual format of a half-day theme seminar on Friday and an update on recent developments on the Saturday. This year the theme seminar will consider the intersections of constitutional law with other branches of law (administrative, common and international law). The Saturday sessions focus on recent developments in four specific areas of Australian public law including the judicial system, contemporary federalism, elections and parliamentarians, and state constitutional law. The dinner on Friday night at Old Parliament House will mark the 50th anniversary of the *Communist Party Case*.

At this stage the conference program is still being developed. Further information will appear in the next newsletter. The conference brochure will be sent out to all those registered with the Centre as having an interest in public law, which includes all those who have attended the Public Law Weekend since 1998.

Proceedings of the Annual Public Law Weekend

10-11 November 2000

The proceedings will be published in a special edition of the *Federal Law Review* during 2001. All participants will be informed when it is available.

Current research projects in the Centre ARC Extra-territoriality Research Project

Deborah Senz and **Hilary Charlesworth** have recently completed the first of a series of papers concerning the implications of extra-territorial legislation for Australia. This research is funded by the Australian Research Council. It has involved consultation with both the Attorney-General's Department and the Department of Foreign Affairs and Trade. The article discusses the nature of extra-territorial legislation and the use of 'blocking' legislation to counter its effects. It examines the history of Australia's blocking legislation and

the effects of foreign extra-territorial legislation on Australia. The article examines strategies for responding to the use of foreign extra-territorial legislation against Australian nationals and corporations and considers how useful the current Australian blocking legislation is. Given the increasing resort to extra-territorial legislation as a means of fostering foreign policy objectives, and the inadequacies of the Australian blocking legislation, Senz and Charlesworth argue that Australia needs to develop a coherent policy and legislative framework for responding to the effects of foreign extra-territorial legislation.

Research for a second article on extra-territoriality is also underway. The second paper will seek to widen the international focus on extra-territorial legislation and challenge the perception that extra-territorial legislation is intrinsically dangerous and subversive. The preoccupation with extra-territorial legislation as a problem is focused on relatively narrow forms of extra-territorial legislation such as US antitrust laws and trade sanctions targeting Cuba, Iran and Libya. This preoccupation obscures the fact that other manifestations of extra-territorial legislation have been embraced by the international community in the fight against transnational problems including child sex tourism and the bribery of foreign officials. The paper will examine the transformative potential of extra-territorial legislation. It will also consider the role of moral and legal global standards or norms in determining the legitimacy of extra-territorial legislation.

Centre publications Occasional Papers

Available at: <<http://law.anu.edu.au/centres/CIPL/WEB22-08.htm>>

Recent papers published by the Centre are:

Constitutional Changes after 1975 by **Gough Whitlam**

The text of his address at the Dismissal Dinner held 11 November 2000 to mark the 25th anniversary of the dismissal of the Whitlam Government.

The Electronic Revolution — Is the Nation State Redundant?

by **John Broome** (former head of the National Crimes Authority)

The text of a talk delivered for the Public Law Discussion Group on 23 November 2000.

Corporations Law: A Case Study in Federalism by **Ian Govey**,

General Manager, Civil Justice & Legal Services, Attorney-General's Department. Presented to the Public Law Discussion Group on 21 February, 2001.



Australian Year Book of International Law

Volume 20 published in December 2000 is a *festschrift* for our esteemed colleague, **Professor Don Greig**. Contributors include **Dame Rosalyn Higgins** (International Court of Justice), **Professor Vaughan Lowe** (Oxford), **Professor Malgosia Fitzmaurice** (London) and **Professor R St J Macdonald** (Dalhousie). It was launched by **Sir Gerard Brennan** (former Chief Justice of Australia) on 18 December at the Law School. Please contact the Centre if you would like to order a copy.



Don Greig

Law and Policy Papers 2000

Law and Policy Papers can be purchased from

The Federation Press:

Telephone:	02 9552 2200
Facsimile:	02 9552 1681
Email:	sales@federationpress.com.au

Paper 14

Australia and the United Nations: Challenges in the New Millennium by **Penny Wensley** (Australia's Ambassador to the United Nations). The text of the first in a series of annual lectures by Australia's Ambassador to the United Nations, presented on 2 March 2000. Now available from Federation Press.

A survey of Australia's involvement with the United Nations and an analysis of the future challenges in light of this relationship.

Paper 15

The Resurrection of the Republic by **George Winterton** (Professor, Faculty of Law, UNSW. Paper available April 2001.)

A discussion of the 1999 Republic Referendum and the prospects for future constitutional change.

Paper 16

Administrative Review in Transition by **Justice Deirdre O'Connor** (President of the Administrative Appeals Tribunal), **Susanne Tongue** (Principal Member of the Migration Review Tribunal), **Dr Peter Nygh** (Acting Principal Member of the Refugee Review Tribunal), **Bill Rolfe** (Principal Member of the Veterans' Review Board) and **Margaret Carstairs** (Acting Principal Member of the Social Security Appeals Tribunal) (Paper available April 2001.)

Five essays by the principal members of the existing tribunals on the proposed changes in the Commonwealth tribunal system discussing the features of the existing system that could be preserved within the new structure.

Discussion groups

Public Law and Public Administration Discussion Group evening seminars

The PLDG seminars are convened by Pam O'Neil and membership is by invitation only

In 2001 these seminars will follow the theme of 'Problems of Federalism and Administrative Law' to reflect 100 years of Federation. The first seminar for 2001 was held on 21 February. **Ian Govey**, Deputy Secretary, Attorney-General's Department spoke on Corporations Law. The second seminar will be held on **5 April**. **Pat Brazil**, Special Counsel, Phillips Fox Lawyers will speak on the 1980 Offshore Constitutional Settlement.

International Law Discussion Group evening seminars

Please contact the Centre if you would like to be placed on the ILDG mailing list to receive invitations

The first seminar for 2001 will be held on Tuesday **3 April**, by **Professor Yehuda Blum** — see front cover for details.

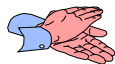
The next two seminars are:

'Sovereignty still rules: Refugees in Australia'

Thursday **26 April**: **Dr Pene Mathew** will speak on Australia's law and policy regarding refugees since the 1990s.

Tuesday **1 May**: **Annemarie Devereux**, **Robin Warner** and **Mary Wood** will speak on 'The establishment of the rule of law in East Timor'.





Congratulations

Robin Creyke has been appointed Vice-President of the National Executive of the Australian Institute of Administrative Law.

Pene Mathew's doctorate was conferred by Columbia University, New York on 14 February 2001. The title of her thesis was: 'Sovereignty and the Right to Seek Asylum: A study of restrictive measures against asylum-seekers, with particular reference to the practice of Australia'. The degree was awarded after publication of the thesis as a series of three articles and an oral defence of the thesis in January 2000.

P Mathew, 'Sovereignty and the Right to Seek Asylum: the Case of Cambodian Asylum-Seekers in Australia' (1994) 15 *Australian Year Book of International Law* 35-101

P Mathew, 'Lest We Forget? Australia's Policy on East Timorese Asylum Seekers' (1999) 11 *International Journal of Refugee Law* 7-59

P Mathew, 'Conformity or Persecution: China's One Child Policy and Refugee Status' (2000) 23 *UNSW Law Journal* 103-134.

Pene has also been awarded \$14,000 through the Faculty Research Grants Scheme to research the right to property in East Timor.



Pene Mathew

Congratulations (again) Professor John McMillan!

John McMillan, who was recently appointed by the Law Faculty to the Alumni Chair in Administrative Law in the Faculty, was also promoted to Professor under the University promotion process, effective from July 2000 (but without two salaries!) The ANU promotions policy states that promotion to level E is 'reserved for those who have made an exceptional contribution in their discipline' and requires 'strong evidence of notable achievement and leadership' in both teaching and scholarship, administration and outreach.

John McMillan has been appointed President of the National Executive of the Australian Institute of Administrative Law.

Zoe Pearson has been granted a scholarship to attend a workshop on humanitarian intervention organised by the American Society of International Law and the American Council on the United Nations to be held in Windhoek, Namibia in August. The scholarship process is very selective and brings great credit to Zoe.

Amelia Simpson has been awarded a prestigious teaching fellowship at Columbia Law School commencing in August 2001. The fellowship will allow Amelia both to teach and complete her LLM.

Arrivals and departures in the Centre

Dr Ann Kent has now taken up residence in the Centre. Ann was recently awarded an ARC Australian Research Fellowship to be held in the Centre. She has written two books on China and human rights: *Between Freedom and Subsistence: China and Human Rights* (Hong Kong, OUP, 1993 and 1995); and *China, the United Nations and Human Rights: The Limits of Compliance* (Philadelphia, University of Pennsylvania Press, 1999). In CIPL she will initially work to complete her book manuscript on 'China, International Organisations and Compliance' and will then proceed to her new ARC project, a study of China's use of international law in its foreign policy. This year she is also publishing articles on Australia's international human rights policy and on the bilateral monitoring of China's human rights.



Ann Kent

Mary Wood, who took leave from the Attorney-General's Department to work with Hilary Charlesworth on the Macarthur Foundation-funded project on women and international dispute resolution, has returned to the Office of International Law in the Department. Mary's work was focused on East Timor and she

made two field trips there. Mary will report on some aspects of her research at the ILDG meeting on May 1 (see p 3).



**Mary Wood on field trip to East Timor
February 2001**

Summer Scholars at CIPL

This year, the Law Faculty hosted two ANU Summer Scholars for the first time — undergraduates selected in a competitive process to develop research skills. Both scholars worked with CIPL members.

Ingrid Barnsley, a fourth-year law student at UNSW, worked under the supervision of Hilary Charlesworth on the issue of corporations and human rights. Ingrid's research resulted in a submission to the Joint Parliamentary Committee on Securities and Corporations which is inquiring into a Bill creating a Corporate Code of Conduct. Ingrid will continue this work at UNSW for an honours paper.

Dorothy Pawlukowski, a third-year law student at the ANU, under the supervision of Dr Pene Mathew, Dorothy worked on two projects in international refugee law. Dorothy developed her own research project on the rights of child refugee claimants with a view to achieving a change in Australia's mandatory detention policy. Dorothy also assisted Pene with ongoing research into the treatment of gender issues in Australia's refugee status determination procedure. Dot achieved a great deal of progress on both projects in a very short space of time. In her report to the Dean, Dot expressed her gratitude for a 'worthwhile and rewarding experience'.

Staff and members' conference papers and addresses

Hilary Charlesworth

- 'Human Rights in the 21st Century', paper given at Conference on Workers' Rights as Human Rights, UNSW, 9 February 2001

- 'The Possibilities and Perils of Feminist Analysis in International Law', keynote address at Feminist Legal Academics Workshop Conference, Queensland University of Technology, 15 February 2001

Robin Creyke

- 'The State of the ART', paper presented to an Australian Institute of Administrative Law seminar, Sydney, 9 March 2001

John McMillan

- 'Parliament and Administrative Law', paper and presentation to the Australian Parliament Centenary of Federation Seminar Series, Parliament House, 7 February 2001
- 'Judicial Review in the Original Jurisdiction of the High Court: Problems and Prospects', paper and presentation to an Australian Institute of Administrative Law seminar, Sydney, 9 March 2001
- Address on the High Court and Administrative Law to a visiting group of students from Michigan State University, Canberra, 8 February 2001

Pene Mathew

- 'Safe for whom? The safe third country concept finds a home in Australia', paper given at the International Association for the Study of Forced Migration's 7th International Research and Advisory Panel, Johannesburg, South Africa, 8 January 2000. This conference marked the 50th Anniversary of the Refugee Convention

Adrienne Stone

- 'The Australian Free Speech Experiment', presented at Australian Studies Association of North American, Annual Conference, Washington DC, 23-25 February
- 'The Bill of Rights Debate in Australia: The Case for Bottom Up Constitutional Reform', presented at University of Texas Law School, Constitutional Law Colloquium, March

Staff and members' publications

Please contact CIPL members directly for further information on their publications

Peter Bailey (with Rachel Callinan)

- 'How the Courts treat the tribunals: a longitudinal study on treatment by the Courts of equal opportunity tribunals', Feature article in *Equal Opportunity*, CCH Newsletter No 117, January 2001



Hilary Charlesworth

- 'Martha Nussbaum's Feminist Internationalism' (2000) 111 *Ethics* 64
- with **Mary Wood** and **Christine Chinkin**, 'Women and Conflict Resolution in International Law' (2000) 53 *Development Bulletin* 7

Michael Coper

- 'The Dismissal Twenty-Five Years On' (2000) 11 *Public Law Review* 251

Robin Creyke

- 'Administrative Justice: The Concept Emerges' (with **John McMillan**), in *Administrative Justice — The Core and the Fringe* (Canberra, AIAL, 2000)
- Sample Examination Question and Answers for Administrative Law, in R Krever, *Mastering Law Studies and Law Exam Techniques* (5th ed) (Sydney, Butterworths, 2001) with **John McMillan** (eds)
- *Administrative Justice — The Core and the Fringe* (Canberra, AIAL, 2000)

Amelia Simpson and Mary Wood

- Forthcoming in (2001) 29 (1) *Federal Law Review* is a case comment by CIPL members Amelia Simpson and Mary Wood on the High Court's recent decision in *Cheng v The Queen*, the latest case to consider the s 80 'trial by jury' provision in the Constitution. The comment provides an overview of the decision and a critique of the reasoning which led a majority again to reject a rights-protective interpretation of s 80.

Adrienne Stone

- 'Comment: Choice of Law Rules, The Application of the Constitution to and the Common Law' (2001) 12 *Public Law Review* (forthcoming)

Adrienne Stone and George Williams

- 'Freedom of Speech and Defamation: Developments in the Common Law World' (2000) 26 *Monash Law Review* (forthcoming)

Members' consultations with government

Hilary Charlesworth

- Gave evidence before the UN Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament House, Canberra, 21 March 2001

Robin Creyke

- Participated in a meeting with the Australian Law Reform Commission and ANU public law academics to discuss the Commission's Discussion Paper No 64 *The Judicial Power of the Commonwealth: A Review of the Judiciary Act 1903 and Related Legislation*, 23 February 2001

John McMillan

- Participated in a meeting with the Australian Law Reform Commission and ANU public law academics to discuss the Commission's Discussion Paper No 64 *The Judicial Power of the Commonwealth: A Review of the Judiciary Act 1903 and Related Legislation*, 23 February 2001
- Participant in a project being undertaken by the Public Service Merit Protection Commission to produce a book for the Centenary of Federation on the history of the Australian Public Service — contributing to the chapter on Accountability
- Member of the judging panel for the Annual Reports Awards for Commonwealth Agencies Reporting under the CAC Act, conducted by the Institute for Public Administration Australia, ACT Branch

Members' media contributions

Hilary Charlesworth

- 'President Clinton and the International Criminal Court', *The Australian*, 15 January 2001

Penelope Mathew

- Interviewed on 'Life Matters', ABC Radio, Friday 8 March, 2001. The topic was gender-related persecution in Australia's refugee status determination procedure.



2001 staff and members of the Centre

Staff

Hilary Charlesworth, *Professor and Director*

Cathy Hutton, *Administrator*

Jenny Braid, *Publications*

Academic Members:

Public Law

Peter Bailey, *Adjunct Professor*

Peter Bayne, *Reader*

Tony Blackshield, *Adjunct Professor*

Jennifer Clarke, *Lecturer*

Michael Coper, *Professor and Dean*

Robin Creyke, *Reader*

Judith Jones, *Lecturer*

John McMillan, *Professor*

John Seymour, *Adjunct Professor*

Amelia Simpson, *Lecturer*

Daniel Stewart, *Lecturer*

Adrienne Stone, *Senior Lecturer*

Fiona Wheeler, *Senior Lecturer*

Phillipa Weeks, *Professor*

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International Law

J-P Fonteyne, *Senior Lecturer*

Penelope Mathew, *Senior Lecturer*

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Pam O'Neil

Dennis Pearce, *Emeritus Professor*

Tom Sherman

Ernst Wilhelm

PhD Candidates

Annemarie Devereux

Zoe Pearson

Helen Watchirs

Research Fellows

Deborah Senz

Mary Wood

Research Assistants

Jill Caldwell

Esther James

Dai Lee

Beth Morris

Alex Owens

Dorothy Pawlukowski

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The Hon. Justice Michael Kirby AC, CMG, High Court of Australia



From left to right: Robert Cornall, John Braithwaite, Hilary Charlesworth, Justice Michael Kirby, Miles Kupa, Justice Susan Kenny, Michael Coper





Press:

Read about it!

The Centre's Annual Report for 2000 is available at
<http://law.anu.edu.au/cipl/annualreport2000.pdf>
complete with colour photographs

